Morning Oregonian.

VOL. XXIII. PORTLAND, OREGON: THURSDAY, JANUARY 17, 1884. NO. 7392.

WASHINGTON.

Situation of the Mexican Treaty Opposed in the Senate.

SENATOR INTRODUCES AN INDIAN WAR BILL

Bill Appropriating One Million Dollars for Steel Rifles.

Mississippi River Earnestly Opposed—Congressional Chit Chat.

Meeting of Inspectors of Steam Vessels.

WASHINGTON, Jan 16—The annual meeting of the board of supervising inspectors of steam vessels began in this city (today) James A. Dumont supervising inspector general is the chair. John Faben, Federal inspector of the cleveland service are for the ensuing year are present from the districts of St. Louis, Cincinnati, Detroit, Buffalo and Memphis. Under the rule of the board steel boilers put in prior to February 1877 were allowed a working pressure upon the assumed tensile strength of the material with which the boilers are made of 60,000 pounds per square inch. This rule was amended to-day so as to allow 70 pounds and inserting 9000, and such boilers will be allowed a working pressure based on the material's ultimate strength of

The National Bankrupt Association

WASHINGTON, Jan 16—The national convention of commercial bodies, to consider the question of a uniform and equitable bankruptcy law throughout the country, which assembled in this city eighty-eight states and three national associations were represented. A. B. Meyer of New Orleans was elected president of the convention, to which the commercial bodies of the country had been permanently organized by the election of a standing committee. The Merchants Exchange of St. Louis was represented by Robert Barth and Charles A. Ramsey, and George Munroe Smith of New York, by

Time Extended.

WASHINGTON, Jan 16—The ocean steamer of the Pacific Mail company, in order to afford further facilities for shipping freight to the Orient, has decided to extend to forty-six hours the time within which shipments may be booked after the actual sailing of the ocean steamer of the following day. This extension of time will apply to all freight shipped by the Pacific Mail steamers from San Francisco to Japan and China, and will go into effect on the 20th inst.

The Weather

WASHINGTON, Jan 16—[Special.]—California—Generally fair weather, with no material change in temperature, except slightly warmer in the southern portion; light to fresh northerly winds, becoming variable.

Oregon and Washington Territory—Fair weather, except light local rains on the coast; slightly warmer; light to fresh northerly winds, becoming variable.

Nevada—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Utah and Arizona—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Idaho and Montana—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Wyoming and Colorado—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

New Mexico—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Dakota—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Minnesota—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Nebraska—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Kansas—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Texas—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Indian Territory—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Missouri—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Arkansas—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Louisiana—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Mississippi—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Tennessee—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Kentucky—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Illinois—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Indiana—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Ohio—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Lower Michigan—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Upper Michigan—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Wisconsin—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Iowa—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Alabama—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Georgia—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Florida—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

South Carolina—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

North Carolina—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Virginia—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

West Virginia—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Pennsylvania—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

New York—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Vermont—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

New Hampshire—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Maine—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Massachusetts—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Rhode Island—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Connecticut—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

New Jersey—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Delaware—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Maryland—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

District of Columbia—Fair weather; slightly warmer; light to fresh northerly winds, becoming variable.

Meeting of Inspectors of Steam Vessels.

WASHINGTON, Jan 16—The annual meeting of the board of supervising inspectors of steam vessels began in this city (today) James A. Dumont supervising inspector general is the chair. John Faben, Federal inspector of the cleveland service are for the ensuing year are present from the districts of St. Louis, Cincinnati, Detroit, Buffalo and Memphis. Under the rule of the board steel boilers put in prior to February 1877 were allowed a working pressure upon the assumed tensile strength of the material with which the boilers are made of 60,000 pounds per square inch. This rule was amended to-day so as to allow 70 pounds and inserting 9000, and such boilers will be allowed a working pressure based on the material's ultimate strength of

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The Daily Oregonian.

THURSDAY MORNING, JAN. 17, 1884.

FUTURE BANK CIRCULATION.

What is to serve as a basis for bank circulation when the national debt shall have been paid? This question already begins to puzzle many. Payment of the national debt, should it be continued at the present rapid rate, will very soon bring it in question for solution. Touching this subject a bold proposition has been broached at Washington, which is attracting attention. It is simply a proposition to make a certain portion of the national debt permanent by the issue of a long two per cent. bond to be used for securing bank circulation. Many journals have expressed approval of it. The Philadelphia *Press* says: "Between a return to wildcat currency and the permanent retention of a portion of the national debt, we unhesitatingly subscribe to the perpetuation of the debt." This has the full ring of one who knows what he is talking about. No less so are his utterances in opposition to the perpetual two per cent. bond scheme, although they contain sentences as unpalatable to one class of readers as the above quotation is to another class. "Nevertheless," says the *Press*, "the fact cannot be disguised that the scheme for a fifty year or perpetual two per cent. bond to serve as a basis for banking when the United States is able to discharge its debt is simply offering the banks a bounty for doing us the favor to issue our paper money. The state banks would, of course, be glad to do it for nothing, but they cannot give us a currency of uniform value. Therefore it is proposed to say to the national banks, 'Now, we will issue as much paper as is wanted in bonds, sell it to you, keep it for you and pay you interest on it, and you issue an equivalent amount of paper currency and receive interest upon it.' This is the bald proposition; we can make nothing else out of it. It may be good banking but we do not believe it is good political economy." Such language cannot fail to set people thinking and studying for themselves what is wrong and what is right in political finance as in other departments of political inquiry.

Others suggest that the choice need not be between national bank currency and wildcat state bank currency, but that coin certificates may become a substitute, providing at once a solid, uniform and satisfactory currency, based on possession and not on credit; a currency that could be made to dispense with the useless expenditure for coinage, by issuing such certificates on assayed bullion; a currency the economy of which would be manifested in the saving of interest on its basis; and in saving enough in coinage to pay for its issue; in other words, wholly inexpensive but entirely secure. It is not, as is stated in some well meaning quarters, "the one thing needful that some way shall be devised in which national bank circulation shall be secured beyond preadventure," but how an adequate, secure and economical currency for the people shall be secured beyond preadventure. If this can be done through the national banks without involving worse evils, well and good; if not, the good of the people must be secured for and the currency provided in some other manner.

ANSWER TO INQUIRER.

A correspondent at Woodburn writes that on last Monday W. C. Evarts, in a speech to the people of that town, asserted that the pork packers of Portland paid the merchants' exchange to withhold the proper quotations of the pork market, thereby depressing the price of pork from 7 cents to 4 cent cents, causing a loss of many thousands of dollars to the farmers, that wool quotations were falsified until the visible supply was bought up by Portland wool men, that the exchange received quotations in cipher and manipulated them to suit, and that the public press of Portland, the exchange and the commission merchants with-hold the proper quotations to the farmer's loss. Other like assertions were also made by the speaker. We should take no notice of such statements did they not reflect upon the integrity of the public press and of our merchants. The exchange is a private institution furnishing reports to those who pay for them. That they are reliable is evident from the fact of their being accepted the country over. The exchange does not, and never did, quote the Portland pork market, confining itself entirely to wheat and freights. It is conclusive that pork packers do not run it. Few Portland men buy wool, much less rush into the country after it. The bulk of the clip is sold on commission by merchants who always demand the top price so that their commissions may be heavy. Quotations are, unless otherwise stated, based upon sales. It follows that there must be a sale to give such a quotation. If there is one article of consumption for which the people of Portland pay from three to four hundred per cent. profit, freight considered, on the price paid the producer, the name of that article would be of interest. This assertion is, on its face, untrue. Market reports are telegraphed in cipher for three reasons: First, to avoid errors in figures; second, economy; third, secrecy. The originals are always on file for comparison with codes by subscribers. The last and most important charge, that there is a general combination to fleece the farmer, is believed by no intelligent person, nor by the speaker. Such a combination is totally impossible and foolish-surd to be considered. The whole matter is scarcely worth reference, but lest this man succeed in fleecing the valley people by the cry of "thief," THE OREGONIAN gives them warning. Evarts is said to be interested in the publication of a so-called farmers' paper here. His statements are false throughout. He is now organizing "union clubs" in the interior. Much the same system was started here nearly three years ago. It was styled the Interior Merchants' Protective Agency. The interior merchants had to visit this city for what little protection they ever got.

An English statistician of high rank calls attention to the fact that during the last fifty years the average of human life in England has increased from 29.9 years to 41.9 years, a gain of two years. No such change could have taken place, he argues, without a great increase in the vitality of the people. "Not only have fewer died, but the masses who have lived must have been healthier and suffered less from sickness than they did. From the nature of the figures, also, the improvement must have been among the masses, and not among a select class, whose figures threw up the average." He says that "in longer life, in increased consumption of the commodities they use, in better education, in greater freedom from crime and pauperism, and in increased savings, the masses of the people are immensely better off than they were fifty years ago." "Discontent with the present," he adds, "should not make us forget that things have been much worse."

Henry B. Payne was the democratic candidate for senator before the Ohio legislature in 1851. The free soilers held the balance of power between the whigs and democrats, and after a contest of two months brought out Benjamin F. Wade, upon whom the whigs united with them. Wade was elected, and continued in the senate eighteen years. At the time of his first election he was a common pleas judge, a stranger to political life, had no acquaintances in the legislature, and was taken up simply because the free soilers were willing to vote for him.

The "holocaust" at Bellevue, Illinois, as the newspapers generally call it, seems to have been prepared in advance so that it might, indeed, be a "whole burnt offering." The outside doors of the convent were locked and had to be burst open with battering rams, and the doors of the bedrooms of the unfortunate victims were locked "in accordance with a rule of the convent." Yet this arrangement was "a very fashionable educational institution!" It was well calculated to make angels of the fashionable inmates.

RIVER IMPROVEMENT.

The exhaustive and excellent review of the river improvement question, furnished the board of trade Monday night by its special committee, is made worse than worthless by a foot-note advising further investigation and delay. What can Messrs. Corbett and Dodd before the national board of trade, be before the commerce committee of congress, with a report which says in so many words that the matter has not been sufficiently considered? They can do simply nothing else than it would not be surprising if they were laughed at for their pains. The board of trade should do only what is wanted, and then go about getting it; but to recite the facts of our channel's existence, suggest plans for removal of the bars, and then, in a foot-note, to cover the matter with a wet blanket by adding that the matter has not been sufficiently investigated, is folly. The national board of trade will be utterly in the dark as to what is wanted, and so will congress. The foot-note, which is nothing more nor less than an empty courtesy to Capt. Buchanan, will be made sing a very different and a very serious meaning; and unless our representatives have the discretion to suppress it, all appeals based upon the board of trade's information and action will be futile. The matter had much better been left to Messrs. Corbett and Dodd without the benefit of the board's information and views.

And without some definite plan of temporary improvement and without some definite appropriation to do the work, it will be idle to ask congress for an appropriation. It is to be expected that congress will appropriate a large sum of money upon assurance from the board of trade that it is the opinion of a over six river men that certain results could be accomplished by its expenditure in a certain way, with the statement that the way is not yet provided. An appeal of this sort would be silly. When it was proposed to build the cities at the mouth of the Mississippi river, Capt. Eads formed a company and made an offer to accomplish certain specified results for a certain specified pay. The proposition was a definite one, it was accepted, and the whole Mississippi river valley is richer to-day for it. But suppose the New Orleans board of trade had gone before congress with the statement as at Capt. Eads was of the opinion that jetties would accomplish certain results desired, and to this statement it was added that in the opinion of the board the matter should be further investigated before action; and to all this have added an appeal for help, what chance would there have for getting the jetties? Just none at all, of course. The thing to do is to organize a company to do the temporary work of sluicing and to make the offer proposed by Mr. Gates. Congress than could either accept or decline it. If we can't or don't want to organize such a company, then there is no use at all of talking about the sluicing scheme.

The farmers of California, after a bitter struggle of many years to save their lands from damage by the debris from hydraulic mining, have gained a substantial victory through the courts. The decision recently rendered by Judge Sawyer, making the temporary injunction granted three years ago against hydraulic mining perpetual, has been the occasion of very natural demonstrations on their part. While the result will be disastrous to many millions of capital invested in mining, unless some means can be devised to prevent the nuisance, there can be no doubt among fair minded men that the case was decided right. The old maxim that one should use his own so as not to injure another's property is founded upon exact justice, and the application of it to this case will have a tendency to impress the rich corporations and mining men of California with the fact that they cannot use their great power with entire recklessness. Although this case involved the welfare mainly of the farmers in the Sacramento valley, the benefits of it will doubtless be felt by the whole agricultural population of the state.

In the constitutional convention of Illinois in the year 1847, there were 162 delegates. An effort was made to secure a reunion of the survivors at Springfield at the beginning of the present year. It was found that only thirty-five of the number were still living. Of these twenty-two assembled, and others sent letters. Among the latter were Judge O. C. Pratt, once a resident of Oregon and now of San Francisco, and E. O. Smith of San Jose. At least three names on the roll-call of thirty-seven years ago could not be accounted for at all—so soon does the on-moving tide of human affairs cover men and hide everything but a recollection, which also will soon pass away.

General Sherman has begun his presidential canvass by trying to make Missouri a republican state. It is only a few weeks ago that he scolded in St. Louis, but he has already told the people there that they are the laughing-stock of the entire nation. He arraigns them for their lack of progress, their indolent complaining ways, their failure to reach out after things, the undeveloped condition of the state—much of it naturally tributary to St. Louis—and many other things. General Sherman broke up the solid south nineteen years ago, and we trust that he will be equally successful in his present campaign.

Mr. Burt, the workingman of parliament, in a paper on American impressions, remarks upon the superiority of our common school system over the English schools. He was surprised to find that in a high school in Illinois two-thirds of the pupils were the children of miners and other working people. "Nothing approaching this," he says, "can be found in any mining district of England." If he had pursued his observations further he would have found that the public schools of this country are much superior to parochial schools.

The liquor men of Ohio have neatly placed the democracy between the devil and the deep sea. They demand the repeal of the Scott law. If they be refused they will defeat the party in the next election; if their demands be complied with the prohibitionists will help to save the party under. It is dangerous to feed with a question like this. It is more likely to be loaded than not.

There is active competition among railroad points in northern Idaho and northeastern Washington for the business of the Coeur d'Alene mines. A town meeting to consider the question was held a few days since at Spokane Falls, and it was resolved to spare no effort to secure the business for that point.

Private advices from New York contradict the telegraph news report that a receiver has been appointed for the Oregon and Transcontinental. Representatives of the company here assert that the report is a piece of stock jobbery.

General Crook insists that as soon as the Indians learns how to keep his family from want, he will gladly give up his tribe. When he knows that his land is really his and cannot be taken from him, the tribal relation will disappear.

Two thousand miners at Deadwood are suffering for transportation to the Coeur d'Alene mines.

I have been afflicted with an Affection of the Throat from childhood, caused by diphtheria, and have used various remedies, but found no relief until I used Piso's Cure for Consumption. I cheerfully recommend it to all who are afflicted. C. M. F. Hampton, Paxton, Ill. Sold by druggists everywhere. 25 cents.

MEETING NOTICES.

Portland Caledonian Club.—A meeting will be held at the hall corner of First and Alder, on Friday evening, January 18, at 8 P.M. All members are requested to be present. By order of A. M. DONALDSON, D. A. MACRAE, Sec. Chief.

KNIGHTS TEMPLAR.

Oregon Commandery, No. 1.

Drill Corps meets at the Asylum this (Thursday) evening, at 7:30 o'clock sharp.

Advertisements such as "Wanted," "Help Wanted," "To Let," "For Sale," etc., will be inserted for ten cents per line first insertion, five cents per line thereafter. No insertion for less than 10 cents. Ten cents per line for Country Readings. Marriages and Deaths fifty cents each. Resolutions of Condolence ten cents per line. All persistent advertising payable in advance.

DIED.

In this city, Jan. 16, Lizzie Gray, aged 1 year and 11 months. Funeral from the residence of her parents, 128 Union street, this (Thursday) afternoon, at 2 o'clock.

H. H. Schwatt & Bros. Artistic Printers, 124 Second street.

NEW TO-DAY.

ESCAPED FROM WOOD SHED AND OTHER PLACES—Some of the paper I used for POSTING BILLS. Any person POSTING BILLS on the property I have legal claim to, will be PROSECUTED. J. C. STEVENS.

BAY MARE AND COLT GENERAL STORE in Portland, Neverwhere, late with R. A. Wood, still keeps, only door from Post. Punctuality, &c.

FOR RENT—FURNISHED ROOM. Apply at 129 Second street.

A GIRL WISHES A PLACE TO DO CHAMBER-work, or housework in a family. Inquire at 129 Second street.

WANTED—A MIDDLE-AGED LADY OR GENTLEMAN to travel in the country to represent a manufacturing house. Address, with stamp, 1 Sansome street, San Francisco.

FOR SALE—HORSE AND PIG. Inquire at 69 Front st., N. W. cor. Front and Madison.

FOR SALE—HOUSE AND LOT, 5 ROOMS AND PANTRY, for sale cheap for cash. Apply at 129 Second street.

AGENTS WANTED TO TRAVEL. Salary and expenses paid. Apply to D. G. WHITCOMB, Bangor, Me.

WANTED—SITUATION BY A SCOTCHMAN. Can give good references. Address 129 Second street.

CHILDREN TAKEN TO BOARD—At 129 Second st., by MRS. PRATT.

FOR RENT, FURNISHED ROOMS. Apply on premises, 8 College st.

SITUATIONS SECURED FOR MALE AND FEMALE Teachers. Parents wanting help please call. MISS A. J. PEPPER, 23 Fourth st., near Salmon st.

WANTED—TWO YOUNG MEN TO LEARN THE BARBER TRADE. Call at 129 Second st., MRS. L. S. BURKE.

LOST—LADIES' GOLD WATCH. BET. Grand ave. and Second st. Finder will please return to 129 Second st. and receive reward.

A YOUNG GIRL WISHES A SITUATION TO do general housework in a private family; is a respectable American girl. Inquire, MISS J. SNELLEN, 129 Second st.

NOTICE—SALE OF RESTAURANT AND RESIDENCE FURNITURE. I will sell at private sale, in parcels or with the lot as may be wanted, my entire New York restaurant furniture, at No. 6 Front st., in the city of Portland, county of Multnomah, state of Oregon; also my residence furniture, consisting of parlor, bedroom, kitchen and dining-room furniture and other articles of household use, in said house and city. This is also a rare opportunity for any one wishing to start in the restaurant business. Call at the premises and see the property. Terms reasonable. Possession given immediately. Apply to JOHN GILLOTT.

NEW PIANOS JUST RENT AT KOHLER & CHASE'S, 57 Third street. 12jan7

RESTAURANTS, HOTELS AND PRIVATE families can find fresh, imported Salmon Caviar and French Cheese, German Sauerkraut and Limburger Cheese, at 84 Morrison st. MRS. M. BACH.

RESPECTFULLY INFORM THE LADIES AND citizens of Portland that I have opened a first-class retail trade and will begin the sale on Monday, 14th inst. MRS. E. BRUNN, 129 Second st.

THE JOLLY ENGLISH WATERMAN CAN be found at Portland, Neverwhere, late with R. A. Wood, still keeps, only door from Post. Punctuality, &c. at work.

IF YOU WISH AN ELEGANT, PLEASANT, comfortable room by the week or month, with gas, fires in the hall, call at 73 Front st., corner of Oak, over the store of Dr. Henry L. Jones.

MARRIED—WASHINGTON—CRUSE—NOV. 5, 1883, at the residence of the bride's father, by the Rev. Leander Lovejoy, Mr. Thomas Washington and Miss Mary Cruse, all of Clackamas county, Oregon.

CLOSING OUT AT COST—BEING ABOUT TO retire from business I offer to the public for 40 days, at first cost, my entire stock of dress goods and millinery, consisting of silks and plushes, also jackets and cloaks not entirely closed out on hand, and every thing to be found in a first-class fancy dry goods store. Call at No. 129 Second st., Stanley Block, and get a bargain. P. N. AYER, Gensmith.

DO YOU KNOW, IF YOU HAVE AN ACCIDENT in Eastern Oregon it is the quickest route by Marshall C. Jackson, notary public and collection agent of Pendleton, Oregon? Refers: First National bank, Pendleton, Oreg.; Ben Holladay, Portland, Or.

REGULAR AUCTION SALE

OF

HOUSEHOLD FURNITURE

ETC., ETC., ETC.

We will sell by auction at our sales-room, No. 127 First street,

FRIDAY, JAN. 18, 1884,

At 10 o'clock A. M.

Extensive Line of Household Furniture, Carpets, etc.

N. B.—This sale is for cash; no reserve; all goods sold to be purchased.

GILMAN & CO., Auctioneers.

CONTINUATION AUCTION SALE

OF

ASSIGNEE'S STOCK OF CROCKERY, GLASSWARE, ETC.

At 67 Morrison St.,

THIS DAY

At 10 A. M., 2 P. M. and 7 P. M.

Sale will positively commence promptly at the hour advertised.

GILMAN & CO., Auctioneers.

SPECIAL AUCTION SALE

OF

HOUSEHOLD FURNITURE

We will sell at the Residence No. 448 Seventh street, next to corner of College,

ON FRIDAY, JAN. 18th, 1884,

At 2 o'clock P. M.

The Furniture of Residence—

Walnut Bedroom Suit, etc.

GILMAN & CO., Auctioneers.

R. E. ALDEN, M. D.,

DENTIST,

Removed to Lubbe's Block, Fourth Floor, (Take the elevator.)

TO LOAN.

$3000 in sums to suit, for short terms, on A1 security. WHITE & RIGGEN, Real Estate Agents, 20 Stark st.

FOR SALE.

Beautifully located Lots in Albina, 33 per cent. cheaper than any other in the market. WHITE & RIGGEN, Real Estate Agents, 20 Stark st.

FOR SALE.

Quarter-Block with Residence in finest part of the city—$7500. Residence of 10 rooms, all modern improvements cost $6000. Fruit in east. WHITE & RIGGEN, Real Estate Agents, 20 Stark st.

FOR SALE.

Quarter-Block with Handsome Two-Story Residence and Stable, on Holladay avenue, East Portland, be suitably located, improved—$5000 (exactly what improvements cost, exclusive of interest). WHITE & RIGGEN, Real Estate Agents, 20 Stark st.

TACOMA.

Ferry's Addition to Tacoma is the only centrally located addition on the market. The finest lots handsomely, commanding splendid view. Lots for sale at reasonable figures and easy terms. For particulars apply to C. P. FERRY, 37 Stark st.

HOUSE FOR RENT.

Eight rooms, all hard finished, and new furniture of five rooms for sale at a rare bargain. Location central. MANLEY & COLE, 98 First st.

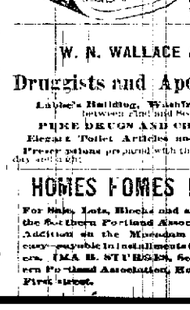
Phoenix Assurance Co., OF LONDON.

OFFICE—NO. 7 STARK STREET.

(North side, between Front and First.)

TELEPHONE NO. 82.

GEORGE L. STORY, AGENT.



Established 1866.

J. B. CONGLE

Manufacturer and Dealer in Saddles, Harness, Bridles, Saddlery, Hardware and Horse Furnishing Goods of every description. Repairing done at short notice. 124 First st., Portland, Or.

W. N. WALLACE & CO.

Druggists and Apothecaries

Lubbe's Building, Washington Street, between First and Second.

PURE DRUGS AND CHEMICALS.

Elegant Toilet Articles and Perfumery.

Prescriptions prepared with the utmost care by a graduate.

HOMES HOMES HOMES!

For Sale, Lots, Blocks and small tracts, by the Southern Portland Association in their Addition on the Missoula road. Terms easy—payable in installments to suit purchasers. EMA B. STUBBS, Secretary Southern Portland Association, Room 3 Po. 105 First street.

EASTERN PAPER WAREHOUSE.

T. H. TAIT,

IMPORTING STATIONER & BLANK BOOK MANUFACTURER,

NO. 80 FIRST STREET, PORTLAND, OR.

CONSTANTLY ON HAND A FULL ASSORTMENT OF

BLANK BOOKS, ENVELOPES, Lapidaric, Autograph

PAPER, ALL STYLES AND WEIGHTS OF BOOK, NEWS, MANILLA, EARTHWARE AND STRAW PAPERS, CARD BOARD, ETC.

Orders by mail or at the box's Boss Saloon will be promptly attended to.

PLAIN AND FANCY PRINTING DONE TO ORDER AT SHORT NOTICE.

BARBOUR'S

SALMON NET THREADS

HAVE NO EQUAL.

The London Fisheries Exhibition

HAVE AWARDED THE

GOLD MEDAL

TO

THE BARBOUR BROTHERS COMPANY

FOR THE

SUPERIORITY

OF THEIR

Flax Net Threads

WOOD! WOOD! WOOD!

SLAB WOOD—$1 50 PER LOAD—FROM WELCH'S MILL. Orders left at mill or at the box's Boss Saloon will be promptly attended to. W. M. LADD.

NEW TO-DAY.

GOOD SAMARITAN HOSPITAL,

Twenty-first and Lake, Portland, Or.

Opened May 14, 1874.

Attending Physicians:

Terms:

LEADY & SOLIS,

REAL ESTATE AND STOCK BROKERS.

Bargains in Real Estate for Investment or Speculation.

NEW YORK AND SAN FRANCISCO STOCKS.

Part's Agency, Tekoa, Rock.

Corner First and Washington—P. O. Box 860.

$800 RESTAURANT IN BEST OREGON TOWN. PARTS AGENCY.

OFFICE TO LET—ROOMS AND BATH, $5 PER MONTH.

AMUSEMENTS.

NEW MARKET THEATER.

FRIDAY EVENING, JAN. 18,

JACKSON'S POPULAR CONCERTS!

MRS. E. B. GAMMANS ..... PIANIST

PROF. P. LUTST ..... ACCOMPANIST

PROF. EDGAR COURSEN ..... VIOLINIST

PROF. G. W. JACKSON ..... CONDUCTOR

PROGRAMME.

PART I.

1. Waltz, Over the Waves ..... Rosa Rosani
2. Song, Always Be Happy ..... Blumenthal
   Miss Lizzie Bloom.
3. Duet, Fra Diavolo ..... Auber
   Messrs. Jackson and Parker.
4. Piano Solo, Mazurka ..... Chopin
   Prof. G. W. Jackson.
5. The Serenade, By the Silvery Light ..... Beethoven
6. Waltzing, with Violin Accompaniment ..... Mollenhauer
   Miss Lizzie Bloom and Prof. Courseu.
7. Song, Marseillaise ..... Mallet
   Miss E. Manchester, Miss L. Bloom and Messrs. Parker, Courseu and Jackson.

PART II.

8. Fantasie Impromptu ..... Chopin
   Prof. G. W. Jackson.
9. Song, Bird Duet ..... Schubert
   Miss E. Manchester, Miss L. Bloom and Miss Courseu.
10. Violin Solo, Fantasie ..... Ernst
    Prof. Courseu.
11. Waltz ..... Mollenhauer
    Miss E. Manchester.
12. Grand Finale, Heavy Hath Shod a Steed ..... Balfe
    Edgar E. Courseu as M. W. Balfe, Miss Bloom as Arline, Miss E. Manchester as Buda Queen, Prof. Jackson as Florestan.

God Save the Queen.

Reserved seats, 50 cents; admission, 25 cents. Doors open at 7:30; concert to commence at 8 o'clock sharp. Reserved seats can be secured at Kohler & Chase's Music Store, Third street, on and after Thursday, January 17.

MECHANICS' PAVILION.

20-MILE

GO-AS-YOU-PLEASE CONTEST

Arrangements were so far perfected as to secure a first-class contest, but owing to the inclemency of the weather the contest was postponed.

CHARLES SAWTELLE,

Champion Runner of Montana and

FRANK JAMES,

Of Oregon, Champion of

$250 a Side!

To take place on the

Skating Pavilion, Friday Evg., Jan. 18.

A child is the confluence of a long-standing dispute as to which of two parties is the best skater. The contest will be between the two champions of their respective states, both fast skaters and well matched. The contest will be for the $250 a side and championship.

A FULL BRASS BAND will be in attendance. Rink will be open every evening. Admission 50 cents; season tickets for gentlemen, $5.

NEW MARKET THEATER.

F. W. FREEMAN, MANAGER.

MONDAY EVENING, JAN. 21st,

Engagement of the Charming Actress,

NELLIE BOYD!

Supported by her Specially Selected Company of Metropolitan Talent, and the Most Successful Drama of the Day,

Monday Evening: the Greatest of all Comedies, entitled

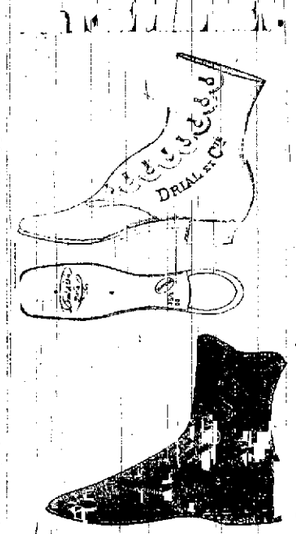
SOLOMON ISAACS!

ENTIRE CHANGE OF BILL NIGHTLY.

NEW SCENERY! NEW PLAYS!

Her Own Elegant 81 year Crystal Band and Superb Orchestra.

A full house is assured. Reserved seats now on sale at Kohler & Chase's Music Store.



LADIES, 86 HOBER & MITCHELL'S FINE SHOES For Ladies, Misses and Children.

HANAN & SON'S FINE HAND-SEWED SHOES FOR MEN'S WEAR.

109 FIRST ST.,

Pacific Boot and Shoe House,

Send for Catalogue.

For a full and complete assortment of Zephyrs, Yarns, Wools, Canvas, Felts, Plushes, Chenilles, Cotton and Linen Macrame, Satins, Embroidery and Knitting Silks, as well as anything in the Fancy Work line,

GOLD AND SILVER MATERIALS

FOR

MASQUERADE AND SOCIETY USE,

Call or send to

P. Hartman & Co.

Cor. Third and Washington.

Parties in the country can send for stamping outfits, with full instructions, for $2.50, $3, $5, $7 and $25. Send either U. S. or postoffice money order.

NEW SHOE HOUSE.

MOFFETT & ANDREWS,

31 Washington St.,

An Entire New Stock Ladies, Misses and Gents

BOOTS AND SHOES,

Received Direct from Eastern Manufacturers.

WINTER GOODS IN STOCK.

LOOK OUT FOR

WHAT'S IT?

CANDLE FISH, or OOLACHAN is a species of fish similar to smelt. It has a rich delicious flavor, and all who try it pronounce it superior to the sardine. It is smoked and sugar-cured and packed in neatly-sealed cans. Although a new fish, it has received high encomiums. All who have not tasted Candle Fish should do so at once.

FOR SALE BY ALL GROCERS.

SMELT SMELT

COLUMBIA RIVER SMELT.

CHAS. A. MALARKEY,

Fourth and Morrison Sts.

FOR SALE—ONE NEW FIRE ARMS No. 8 shot gun, cheap for cash. Inquire at 129 Second st

The Daily Oregonian.

THURSDAY MORNING, JAN. 17, 1884

METEOROLOGICAL REPORT

FOR SAME DAY

Name of Station	Height above Sea Level	Barometer Reduced	Thermometer	Direction of Wind	Velocity of Wind	Rainfall	Weather
Portland	50	30.15	40	S	4	0.00	Cloudy
Roseburg	400	30.26	42	S	2	0.00	Cloudy
Salem	154	30.20	42	S	2	0.00	Cloudy
Albany	240	30.16	42	S	2	0.00	Cloudy
Corvallis	230	30.18	42	S	2	0.00	Cloudy
Astoria	30	30.30	44	S	4	0.00	Cloudy

Observations taken at 5:47 P. M.

THE OREGONIAN IN THE EAST

Single copies can be seen at the following places in the East:

[illegible]

Files of THE OREGONIAN can be seen at the following places in the East:

[illegible]

CLIX

AN ATTRACTIVE CASE.—Dan Sullivan and George Ferguson, who have been under arrest for several days on the charge of kidnapping Agnes Galvin, were arraigned in the police court yesterday morning. Detective Snyder moved that the case be continued, as he expected important witnesses in the Morland case from Salem. Mr. Sullivan's counsel objected, and the motion was overruled. Mr. Snyder then asked that the defendants be held to bail in the sum of $1,000 each, which was done. Bail was furnished by Peter Sullivan, father of Dan Sullivan, and the prisoners were released from custody. Miss Galvin was present and testified. Miss Galvin was over and examined by Mr. Snyder. She testified that on the evening of the 11th inst. she was coming from her home on Front street to the city, and when she reached the bridge near Belcher's mill she was accosted by Dan Sullivan, who asked her to go with him to see his mother. She refused, and he then caught hold of her arm and attempted to drag her along. She resisted, and he then struck her in the face with his fist. She then started to run, and he caught her by the hair of the head and dragged her down. She got up and started to run again, when he struck her a second time. She then ran to the house of Mrs. Sullivan, and told her what had occurred. Mrs. Sullivan then went out and talked with her son, and then returned to the house. Miss Galvin then went home. Dan Sullivan was over and examined by Mr. Snyder. He testified that on the evening of the 11th inst. he met Miss Galvin on the bridge near Belcher's mill. He had been there a short time when Miss Galvin came along. He asked her to go home with him to see his mother, but she refused. He then caught hold of her arm and attempted to drag her along, when she struck him in the face with her fist. He then struck her in the face with his fist. She then started to run, and he caught her by the hair of the head and dragged her down. She got up and started to run again, when he struck her a second time. She then ran to the house of Mrs. Sullivan, and told her what had occurred. Mrs. Sullivan then went out and talked with her son, and then returned to the house. Miss Galvin then went home. Peter Sullivan was over and examined by Mr. Snyder. He testified that on the evening of the 11th inst. he was at home when Miss Galvin came to the house. She told him that Dan had struck her in the face with his fist. He then went out and talked with his son, and then returned to the house. Miss Galvin then went home. Mrs. Sullivan was over and examined by Mr. Snyder. She testified that on the evening of the 11th inst. she was at home when Miss Galvin came to the house. She told her that Dan had struck her in the face with his fist. She then went out and talked with her

The Daily Oregonian

THURSDAY MORNING, JAN. 17, 1884.

DECISION IN U. S. CIRCUIT COURT, DEADY, J.

U. S. Circuit Court, District of Oregon.

Monday, January 4, 1884.

John Gilmore v. The Northern Pacific Railway Company.—At law.—Action for Injury to Person.

(1) Injury caused by negligence of fellow-servants. The rule first adopted in Farwell v. Boston & W. R. R., 4 Metc., 49, that a master who is exercising due care shall not be responsible for the acts and omissions of his servants, is not responsible for an injury sustained by one of them in the course of his employment, occasioned by the negligence of another, however different the grade or kind of the labor of such servants, or widely separated the locality of their several employments, is doubted by the current of judicial opinion and the decisions, so as to meet the ends of justice in cases since arising of corporations and officers engaged in varied and widely extended operations like the one now being carried on by the defendant, it can in reality be divided into separate parts, or departments, under the direction and control of local bosses, superintendents or heads of departments, who, so far as the interests of property are concerned, represent and stand for the corporation with respect only unqualified power to employ, direct and discharge workmen and to provide the necessary material and appliances for their convenient and safe employment.

(2) When fellow-servant stands for master. It seems well established that a master is responsible to his servant for an injury sustained by the latter without his fault, in consequence of the negligence of a fellow-servant. (3) When the latter, having authority over the former, orders him to do an act not within the scope of his employment, he will only be required to answer for contributory negligence if he exercised his own discretion or judgment in the premises, and was not simply executing the command of his superior.

This was an action brought by the plaintiff, a citizen of Oregon, against the defendant, a corporation formed under a law of the United States, to recover the sum of $25,000 damages for serious bodily injuries, sustained by him on February 11, 1883, at Horse Plains, Missoula county, Montana, which in the complaint of the defendant are ascribed to the carelessness and unskillfulness of the defendant in and about the exploding of a charge of giant powder, under the direction of one Curtin, the boss of a gang of men employed by the defendant in excavating a tunnel through a mountain on the line of the railroad of the defendant, which was then being constructed by it in that locality.

The answer of the defendant contains a denial of all the allegations of the complaint and a plea or defense that the injury suffered by the plaintiff was occasioned and occasioned by his own fault, carelessness and negligence, and that of Curtin, Osborne and fellow servants; and without the fault of the defendant.

The case was tried with a jury on November 21 and there was a verdict and judgment for the plaintiff in the sum of $15,000.

The defendant now moves for a new trial on the ground: 1. Insufficiency of the evidence to justify the verdict; and 2. Error in law occurring at the trial.

On the argument of the motion, the first ground was abandoned, it being admitted that the injury to the plaintiff was the direct result of the negligence of the foreman and the only point made in support of it or that the court erred in not instructing the jury as requested by the defendant, that if the defendant exercised reasonable care in the employment and position of Curtin as foreman, and provided him or placed at his control a safe appliance for thawing giant powder, of the most approved kind, and one that is in general use for that purpose, the plaintiff is not entitled to recover; or in other words, that Curtin, the boss of the gang in which the plaintiff was at work, was only his fellow-servant, and therefore the defendant is not responsible for any injury sustained by the plaintiff through or by means of such foreman's fault or negligence.

On the trial it appeared from the evidence that the plaintiff is a man about 41 years of age, accustomed to labor with a pick and shovel, and that he was in the employ of defendant as such laborer, from April 7, 1882, to the date of his injury; that a great many gangs of men, numbering fifty or more each, we're at this time in the employ of the defendant in this region, engaged in the construction of its road, at points from three to five miles apart, under the direction and control of local bosses, who had the power to employ and discharge the men as they saw proper; that the whole line of work was in the charge of a general superintendent, Mr. J. B. Hobart, and associate, who traveled along the line at intervals and inspected the condition of the gangs or camps and the character of the work being done by them, and gave such directions to the several bosses concerning the same as was needed; that by some of these gangs giant powder was used for blasting rock and frozen earth, and that in such case the handling of this powder, and particularly the thawing of it, was committed to the special charge of the local boss, who was supposed to have some special qualifications for the work and received extra compensation for the skill and risk involved therein; that it being known to the superintendent that it was dangerous to thaw giant powder by placing the sticks or cartridges before an open fire, notice was given generally to the bosses not to do it, but to use a "thawing-out" or ditch in the ground, in which the powder could be placed and subjected to a gradual and uniform heat from fire at the mouth of the cave, which warmed the air within, or a device called a "thawer" or "thawer"—the same being a galvanized iron kettle, weighing from 50 to 75 pounds, with double walls, whereby the powder placed in the body of this vessel and hung over a fire—the space between the walls being filled with water—was subjected to a gradual and uniform heat, so as to prevent a partial or unequal thawing or softening of the mass, and thereby letting a portion of the nitro-glycerine in its composition run from the cartridges under some explosive matter, wherein it was held in absorption, in which state it was very liable to explode from handling or any slight disturbance or concussion; that these "thawers" were provided by the superintendent and stored at a convenient place at the end of the road, from whence they could be obtained by a local boss whenever he desired one; but none was ever furnished to or used in the camp or gang when plaintiff was employed, and Curtin always thawed his powder before an open fire; that on the morning of February 11 Curtin's gang were engaged in cutting a ditch about a half mile from the head of the road for the purpose of taking water to the tank, when Curtin said to the plaintiff, "Jack, we have to thaw some powder," to which he answered, "Where is 'Old Billy,' the powder thawer?" when Curtin replied, "I forgot that; do you go some wood and make the fire," and thereupon the plaintiff cut and carried wood from the vicinity and made and kept up the fire, while "Old Billy" and Curtin attended to the thawing of the powder, until some time in the afternoon, and just as the plaintiff was walking away from the fire in the direction of where the rest of the "gang" were working on the ditch, Curtin picked up a stick of the powder and, as he turned his face from the fire, said, "Is this anyway near thawed?" when it exploded in his hand, killing himself and "Old Billy" outright and injuring the plaintiff severely, as by including his right arm, lacerating the muscles of his arm, breaking the bones of his ear, injuring the sight of one of his eyes and otherwise affecting him, so that he is reduced from the condition of a strong, well man to that of an invalid, who will probably never be able to labor again, or be able to bear free from physical pain and theever-present fear that a short time before the explosion Thomas Flanigan, an assistant superintendent, passed along the road, and as he testifies, saw the powder being thawed before the fire, and told Curtin to have it removed, that he knew it was contrary to orders, and he would discharge him on the first case; and he would discharge him on the first case; and he passed on while engaging to do so; that he knew of these gangs using powder and always thawed it in the manner before the fire, and while assenting to the thawing of powder by direction of the boss, was ignorant of the fact that the local boss, so far, stood in the place of the defendant and of a fellow-servant, and was in charge of the work so as to obtain and use for proper ap liances for thawing powder, and also that the plaintiff be aided in having powder with all the necessary or such appliances, were ways of acts for which the defendant is responsible to the plaintiff so far as he was injured thereby.

DEADY, J.

This action is brought by the plaintiff, a citizen of Oregon, against the defendant, a corporation formed under a law of the United States, to recover the sum of $25,000 damages for serious bodily injuries, sustained by him on February 11, 1883, at Horse Plains, Missoula county, Montana, which in the complaint of the defendant are ascribed to the carelessness and unskillfulness of the defendant in and about the exploding of a charge of giant powder, under the direction and control of local bosses, superintendents or heads of departments, who, so far as the interests of property are concerned, represent and stand for the corporation with respect only unqualified power to employ, direct and discharge workmen and to provide the necessary material and appliances for their convenient and safe employment.

(2) When fellow-servant stands for master. It seems well established that a master is responsible to his servant for an injury sustained by the latter without his fault, in consequence of the negligence of a fellow-servant. (3) When the latter, having authority over the former, orders him to do an act not within the scope of his employment, he will only be required to answer for contributory negligence if he exercised his own discretion or judgment in the premises, and was not simply executing the command of his superior.

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The answer of the defendant contains a denial of all the allegations of the complaint and a plea or defense that the injury suffered by the plaintiff was occasioned and occasioned by his own fault, carelessness and negligence, and that of Curtin, Osborne and fellow servants; and without the fault of the defendant.

The case was tried with a jury on November 21 and there was a verdict and judgment for the plaintiff in the sum of $15,000.

The defendant now moves for a new trial on the ground: 1. Insufficiency of the evidence to justify the verdict; and 2. Error in law occurring at the trial.

On the argument of the motion, the first ground was abandoned, it being admitted that the injury to the plaintiff was the direct result of the negligence of the foreman and the only point made in support of it or that the court erred in not instructing the jury as requested by the defendant, that if the defendant exercised reasonable care in the employment and position of Curtin as foreman, and provided him or placed at his control a safe appliance for thawing giant powder, of the most approved kind, and one that is in general use for that purpose, the plaintiff is not entitled to recover; or in other words, that Curtin, the boss of the gang in which the plaintiff was at work, was only his fellow-servant, and therefore the defendant is not responsible for any injury sustained by the plaintiff through or by means of such foreman's fault or negligence.

On the trial it appeared from the evidence that the plaintiff is a man about 41 years of age, accustomed to labor with a pick and shovel, and that he was in the employ of defendant as such laborer, from April 7, 1882, to the date of his injury; that a great many gangs of men, numbering fifty or more each, we're at this time in the employ of the defendant in this region, engaged in the construction of its road, at points from three to five miles apart, under the direction and control of local bosses, who had the power to employ and discharge the men as they saw proper; that the whole line of work was in the charge of a general superintendent, Mr. J. B. Hobart, and associate, who traveled along the line at intervals and inspected the condition of the gangs or camps and the character of the work being done by them, and gave such directions to the several bosses concerning the same as was needed; that by some of these gangs giant powder was used for blasting rock and frozen earth, and that in such case the handling of this powder, and particularly the thawing of it, was committed to the special charge of the local boss, who was supposed to have some special qualifications for the work and received extra compensation for the skill and risk involved therein; that it being known to the superintendent that it was dangerous to thaw giant powder by placing the sticks or cartridges before an open fire, notice was given generally to the bosses not to do it, but to use a "thawing-out" or ditch in the ground, in which the powder could be placed and subjected to a gradual and uniform heat from fire at the mouth of the cave, which warmed the air within, or a device called a "thawer" or "thawer"—the same being a galvanized iron kettle, weighing from 50 to 75 pounds, with double walls, whereby the powder placed in the body of this vessel and hung over a fire—the space between the walls being filled with water—was subjected to a gradual and uniform heat, so as to prevent a partial or unequal thawing or softening of the mass, and thereby letting a portion of the nitro-glycerine in its composition run from the cartridges under some explosive matter, wherein it was held in absorption, in which state it was very liable to explode from handling or any slight disturbance or concussion; that these "thawers" were provided by the superintendent and stored at a convenient place at the end of the road, from whence they could be obtained by a local boss whenever he desired one; but none was ever furnished to or used in the camp or gang when plaintiff was employed, and Curtin always thawed his powder before an open fire; that on the morning of February 11 Curtin's gang were engaged in cutting a ditch about a half mile from the head of the road for the purpose of taking water to the tank, when Curtin said to the plaintiff, "Jack, we have to thaw some powder," to which he answered, "Where is 'Old Billy,' the powder thawer?" when Curtin replied, "I forgot that; do you go some wood and make the fire," and thereupon the plaintiff cut and carried wood from the vicinity and made and kept up the fire, while "Old Billy" and Curtin attended to the thawing of the powder, until some time in the afternoon, and just as the plaintiff was walking away from the fire in the direction of where the rest of the "gang" were working on the ditch, Curtin picked up a stick of the powder and, as he turned his face from the fire, said, "Is this anyway near thawed?" when it exploded in his hand, killing himself and "Old Billy" outright and injuring the plaintiff severely, as by including his right arm, lacerating the muscles of his arm, breaking the bones of his ear, injuring the sight of one of his eyes and otherwise affecting him, so that he is reduced from the condition of a strong, well man to that of an invalid, who will probably never be able to labor again, or be able to bear free from physical pain and the ever-present fear that a short time before the explosion Thomas Flanigan, an assistant superintendent, passed along the road, and as he testifies, saw the powder being thawed before the fire, and told Curtin to have it removed, that he knew it was contrary to orders, and he would discharge him on the first case; and he would discharge him on the first case; and he passed on while engaging to do so; that he knew of these gangs using powder and always thawed it in the manner before the fire, and while assenting to the thawing of powder by direction of the boss, was ignorant of the fact that the local boss, so far, stood in the place of the defendant and of a fellow-servant, and was in charge of the work so as to obtain and use for proper ap liances for thawing powder, and also that the plaintiff be aided in having powder with all the necessary or such appliances, were ways of acts for which the defendant is responsible to the plaintiff so far as he was injured thereby.

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The defendant now moves for a new trial on the ground: 1. Insufficiency of the evidence to justify the verdict; and 2. Error in law occurring at the trial.

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On the trial it appeared from the evidence that the plaintiff is a man about 41 years of age, accustomed to labor with a pick and shovel, and that he was in the employ of defendant as such laborer, from April 7, 1882, to the date of his injury; that a great many gangs of men, numbering fifty or more each, we're at this time in the employ of the defendant in this region, engaged in the construction of its road, at points from three to five miles apart, under the direction and control of local bosses, who had the power to employ and discharge the men as they saw proper; that the whole line of work was in the charge of a general superintendent, Mr. J. B. Hobart, and associate, who traveled along the line at intervals and inspected the condition of the gangs or camps and the character of the work being done by them, and gave such directions to the several bosses concerning the same as was needed; that by some of these gangs giant powder was used for blasting rock and frozen earth, and that in such case the handling of this powder, and particularly the thawing of it, was committed to the special charge of the local boss, who was supposed to have some special qualifications for the work and received extra compensation for the skill and risk involved therein; that it being known to the superintendent that it was dangerous to thaw giant powder by placing the sticks or cartridges before an open fire, notice was given generally to the bosses not to do it, but to use a "thawing-out" or ditch in the ground, in which the powder could be placed and subjected to a gradual and uniform heat from fire at the mouth of the cave, which warmed the air within, or a device called a "thawer" or "thawer"—the same being a galvanized iron kettle, weighing from 50 to 75 pounds, with double walls, whereby the powder placed in the body of this vessel and hung over a fire—the space between the walls being filled with water—was subjected to a gradual and uniform heat, so as to prevent a partial or unequal thawing or softening of the mass, and thereby letting a portion of the nitro-glycerine in its composition run from the cartridges under some explosive matter, wherein it was held in absorption, in which state it was very liable to explode from handling or any slight disturbance or concussion; that these "thawers" were provided by the superintendent and stored at a convenient place at the end of the road, from whence they could be obtained by a local boss whenever he desired one; but none was ever furnished to or used in the camp or gang when plaintiff was employed, and Curtin always thawed his powder before an open fire; that on the morning of February 11 Curtin's gang were engaged in cutting a ditch about a half mile from the head of the road for the purpose of taking water to the tank, when Curtin said to the plaintiff, "Jack, we have to thaw some powder," to which he answered, "Where is 'Old Billy,' the powder thawer?" when Curtin replied, "I forgot that; do you go some wood and make the fire," and thereupon the plaintiff cut and carried wood from the vicinity and made and kept up the fire, while "Old Billy" and Curtin attended to the thawing of the powder, until some time in the afternoon, and just as the plaintiff was walking away from the fire in the direction of where the rest of the "gang" were working on the ditch, Curtin picked up a stick of the powder and, as he turned his face from the fire, said, "Is this anyway near thawed?" when it exploded in his hand, killing himself and "Old Billy" outright and injuring the plaintiff severely, as by including his right arm, lacerating the muscles of his arm, breaking the bones of his ear, injuring the sight of one of his eyes and otherwise affecting him, so that he is reduced from the condition of a strong, well man to that of an invalid, who will probably never be able to labor again, or be able to bear free from physical pain and the ever-present fear that a short time before the explosion Thomas Flanigan, an assistant superintendent, passed along the road, and as he testifies, saw the powder being thawed before the fire, and told Curtin to have it removed, that he knew it was contrary to orders, and he would discharge him on the first case; and he would discharge him on the first case; and he passed on while engaging to do so; that he knew of these gangs using powder and always thawed it in the manner before the fire, and while assenting to the thawing of powder by direction of the boss, was ignorant of the fact that the local boss, so far, stood in the place of the defendant and of a fellow-servant, and was in charge of the work so as to obtain and use for proper ap liances for thawing powder, and also that the plaintiff be aided in having powder with all the necessary or such appliances, were ways of acts for which the defendant is responsible to the plaintiff so far as he was injured thereby.

DEADY, J.

This action is brought by the plaintiff, a citizen of Oregon, against the defendant, a corporation formed under a law of the United States, to recover the sum of $25,000 damages for serious bodily injuries, sustained by him on February 11, 1883, at Horse Plains, Missoula county, Montana, which in the complaint of the defendant are ascribed to the carelessness and unskillfulness of the defendant in and about the exploding of a charge of giant powder, under the direction and control of local bosses, superintendents or heads of departments, who, so far as the interests of property are concerned, represent and stand for the corporation with respect only unqualified power to employ, direct and discharge workmen and to provide the necessary material and appliances for their convenient and safe employment.

(2) When fellow-servant stands for master. It seems well established that a master is responsible to his servant for an injury sustained by the latter without his fault, in consequence of the negligence of a fellow-servant. (3) When the latter, having authority over the former, orders him to do an act not within the scope of his employment, he will only be required to answer for contributory negligence if he exercised his own discretion or judgment in the premises, and was not simply executing the command of his superior.

The answer of the defendant contains a denial of all the allegations of the complaint and a plea or defense that the injury suffered by the plaintiff was occasioned and occasioned by his own fault, carelessness and negligence, and that of Curtin, Osborne and fellow servants; and without the fault of the defendant.

The case was tried with a jury on November 21 and there was a verdict and judgment for the plaintiff in the sum of $15,000.

The defendant now moves for a new trial on the ground: 1. Insufficiency of the evidence to justify the verdict; and 2. Error in law occurring at the trial.

On the argument of the motion, the first ground was abandoned, it being admitted that the injury to the plaintiff was the direct result of the negligence of the foreman and the only point made in support of it or that the court erred in not instructing the jury as requested by the defendant, that if the defendant exercised reasonable care in the employment and position of Curtin as foreman, and provided him or placed at his control a safe appliance for thawing giant powder, of the most approved kind, and one that is in general use for that purpose, the plaintiff is not entitled to recover; or in other words, that Curtin, the boss of the gang in which the plaintiff was at work, was only his fellow-servant, and therefore the defendant is not responsible for any injury sustained by the plaintiff through or by means of such foreman's fault or negligence.

On the trial it appeared from the evidence that the plaintiff is a man about 41 years of age, accustomed to labor with a pick and shovel, and that he was in the employ of defendant as such laborer, from April 7, 1882, to the date of his injury; that a great many gangs of men, numbering fifty or more each, we're at this time in the employ of the defendant in this region, engaged in the construction of its road, at points from three to five miles apart, under the direction and control of local bosses, who had the power to employ and discharge the men as they saw proper; that the whole line of work was in the charge of a general superintendent, Mr. J. B. Hobart, and associate, who traveled along the line at intervals and inspected the condition of the gangs or camps and the character of the work being done by them, and gave such directions to the several bosses concerning the same as was needed; that by some of these gangs giant powder was used for blasting rock and frozen earth, and that in such case the handling of this powder, and particularly the thawing of it, was committed to the special charge of the local boss, who was supposed to have some special qualifications for the work and received extra compensation for the skill and risk involved therein; that it being known to the superintendent that it was dangerous to thaw giant powder by placing the sticks or cartridges before an open fire, notice was given generally to the bosses not to do it, but to use a "thawing-out" or ditch in the ground, in which the powder could be placed and subjected to a gradual and uniform heat from fire at the mouth of the cave, which warmed the air within, or a device called a "thawer" or "thawer"—the same being a galvanized iron kettle, weighing from 50 to 75 pounds, with double walls, whereby the powder placed in the body of this vessel and hung over a fire—the space between the walls being filled with water—was subjected to a gradual and uniform heat, so as to prevent a partial or unequal thawing or softening of the mass, and thereby letting a portion of the nitro-glycerine in its composition run from the cartridges under some explosive matter, wherein it was held in absorption, in which state it was very liable to explode from handling or any slight disturbance or concussion; that these "thawers" were provided by the superintendent and stored at a convenient place at the end of the road, from whence they could be obtained by a local boss whenever he desired one; but none was ever furnished to or used in the camp or gang when plaintiff was employed, and Curtin always thawed his powder before an open fire; that on the morning of February 11 Curtin's gang were engaged in cutting a ditch about a half mile from the head of the road for the purpose of taking water to the tank, when Curtin said to the plaintiff, "Jack, we have to thaw some powder," to which he answered, "Where is 'Old Billy,' the powder thawer?" when Curtin replied, "I forgot that; do you go some wood and make the fire," and thereupon the plaintiff cut and carried wood from the vicinity and made and kept up the fire, while "Old Billy" and Curtin attended to the thawing of the powder, until some time in the afternoon, and just as the plaintiff was walking away from the fire in the direction of where the rest of the "gang" were working on the ditch, Curtin picked up a stick of the powder and, as he turned his face from the fire, said, "Is this anyway near thawed?" when it exploded in his hand, killing himself and "Old Billy" outright and injuring the plaintiff severely, as by including his right arm, lacerating the muscles of his arm, breaking the bones of his ear, injuring the sight of one of his eyes and otherwise affecting him, so that he is reduced from the condition of a strong, well man to that of an invalid, who will probably never be able to labor again, or be able to bear free from physical pain and the ever-present fear that a short time before the explosion Thomas Flanigan, an assistant superintendent, passed along the road, and as he testifies, saw the powder being thawed before the fire, and told Curtin to have it removed, that he knew it was contrary to orders, and he would discharge him on the first case; and he would discharge him on the first case; and he passed on while engaging to do so; that he knew of these gangs using powder and always thawed it in the manner before the fire, and while assenting to the thawing of powder by direction of the boss, was ignorant of the fact that the local boss, so far, stood in the place of the defendant and of a fellow-servant, and was in charge of the work so as to obtain and use for proper ap liances for thawing powder, and also that the plaintiff be aided in having powder with all the necessary or such appliances, were ways of acts for which the defendant is responsible to the plaintiff so far as he was injured thereby